

**Petition For Revival Of An Application For Patent Abandoned
Unintentionally Under 37 CFR 1.137(b) (Large Entity)**

Docket No.
TPP 30887CIP2

In Re Application Of: Ola OLOFSSON et al.

JAN 28 2008

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/910,960	July 24, 2001	V. MacArthur	24257	3679	4841

Invention:

GUIDING MEANS AT A JOINT

Attention: Office of Petitions
Mail Stop Petition
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper response to a notice or action by the Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extension of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee--required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. ☒ A proposed reply to the above-identified notice or action:

☒ is enclosed. ☐ was filed on _____

The proposed reply is in the form of: Supplemental Appeal Brief

2. ☐ The issue fee:

☐ is enclosed. ☐ was paid on 01/29/2008 MAHME1-00000139 09910960

3. ☒ The abandoned application was a:

01 FC:1453

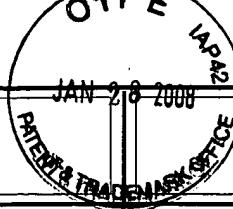
1540.00 0P

☐ design application. ☒ utility application. ☐ plant application.

4. ☐ A terminal disclaimer (and fee) disclaiming a period equivalent to the period of abandonment is enclosed.

5. ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

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Calculation and Payment of Fees

Enclosed are the following fees:

- | | |
|--------------------------------------------------------------------------------------------|-------------------|
| 6. <input checked="" type="checkbox"/> Petition fee under 37 CFR 1.17(m) in the amount of: | <u>\$1,540.00</u> |
| 7. <input type="checkbox"/> Fee for reply in the amount of: | _____ |
| 8. <input type="checkbox"/> Issue fee in the amount of: | _____ |
| 9. <input type="checkbox"/> Continuing application filing fee in the amount of: | _____ |
| 10. <input type="checkbox"/> Terminal disclaimer fee in the amount of: | _____ |
| 11. <input checked="" type="checkbox"/> _____ | _____ |
| Total fees enclosed: <u>\$1,540.00</u> | |

The fee of **\$1,540** is to be paid as follows:

- ☒ A check in the amount of the fee is enclosed.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **19-4375**
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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Docket No.
TPP 30887CIP2

In Re Application Of:

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Statement

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), Subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit-card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioner/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

Dated: **January 28, 2008**

Thomas P. Pavelko, Esquire
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37

(Date)

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Ola OLOFSSON et al.

Group Art Unit: 3679

Serial No.: 09/910,960

Examiner: V. MacArthur

Filed: July 24, 2001

Confirmation No.: 4841

For: GUIDING MEANS AT A JOINT

PETITION TO REVIVE AN APPLICATION

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Background Facts

Applicants filed a Notice of Appeal in connection with the above-identified application on July 25, 2006 and filed an original Brief on Appeal on September 25, 2006.

On December 4, 2006, the Patent Office mailed a Notice of Non-Compliant Brief setting a date of January 4, 2007 for submitting a substitute Appeal Brief.

On January 4, 2007, Applicants submitted their first Supplemental Appeal Brief and on April 24, 2008, the Patent Office mailed a Notice of Non-Compliant Appeal Brief concerning, *inter alia*, that statement, in the continuation page, that:

the "summary of claimed subject matter" section fails to include the reference character associated with each claimed element, e.g., "guiding means," "core," "fitting clearance," "first part of the fitting clearance," "second guiding fitting clearance," "main part," "smaller part," "distal angle surface," "section extending from the distal angled surface," "glue," "etc." Note that reference to the drawings of the claimed subject matter is to be by reference characters. See, 37 C.F.R. §41.37(c).

Although Applicants respectfully submit that there is no such requirement in 37 C.F.R. §41.37(c) as alleged by the Examiner (note that 37 C.F.R. §41.37(c)(1)(V) only requires reference to the specification by page and line number, and to the drawing, if any, by reference characters) and, thus, if no reference characters were provided in the drawings or indeed if no drawing at all were

provided, there is no requirement to reference the claimed subject matter to the drawings as alleged by the Examiner.

Nonetheless, in an attempt to satisfy the Examiner, Applicants filed a Second Supplemental Appeal Brief, with a four month extension of time on May 2, 2007. On July 18, 2007, the Patent Office mailed a third Notice of Non-Compliant Brief and on October 25, 2007, the Patent Office mailed a Notice of Abandonment alleging that because the Briefs filed on September 25, 2006, January 4, 2007 and May 2, 2007 were held to be non-compliant, the application is abandoned because there are no allowed claims.

It is from this decision of abandonment that Applicants petition to revive this application.

Specific Relief Requested

It is respectfully requested that the Applicants' Petition to Revive on the grounds of unintentional abandonment be granted. In addition to the fee for such unintentional revival, Applicants also submit a Third Supplemental Appeal Brief. An Interview Summary Record is separately provided.

Argument

Although it is a matter of common knowledge among the patent bar that the U.S. Patent Office Board of Patent Appeals and Interferences is overworked, as evidenced by their burgeoning docket of pending appeals, and the now historically long delay from the time of filing an Appeal Brief until Decision on such Brief, Applicants respectfully submit that the denial of Applicants' right to appeal solely on the Examiner's alleged basis of failure to comply with 37 C.F.R. §41.37(c)(1)(V) with the only remedy for the failure to comply being by right of petition, and not by way of appeal, is a denial of Applicants' right to due process by route of appeal.

The sole basis for holding the brief "non-responsive" is for the reason that the Examiner does not like the style/format and/or content of Appellants' characterization of their invention in the "Summary" section of the brief.

Applicants note that the Final Rejection does not contain any rejection under 35 U.S.C. §112, first paragraph, (failure of written description or failure of enablement) nor even on objection to the drawings under MPEP §608.02(e).

However, the Examiner, now under the guise of the Appeal Rules, objects to the Brief as not complying with 37 C.F.R. §41.32(c)(1)(V) if the drawings do not contain reference numerals to each of the claimed features (used as the basis for rejecting the Supplemental Appeal Brief filed January 4, 2007) and when attempting to comply with the Examiner's requirement to label the drawings, rejects such attempt as "new evidence" when filed in the Second Supplemental Appeal Brief on May 2, 2007.

In Applicants' discussion with the Petition's Office prior to filing this Petition, it was suggested by a Petition's Examiner that the Petition's Office would defer to the Examiner as to whether any Brief accompanying this Petition to Revive would comply with 37 C.F.R. §41.37. Applicants respectfully submit that such a position by the Petition's Office is a dereliction of the Director's authority to provide an independent review (whether by way of appeal or petition) of failures of the Examiner to comply with the applicable statutes, rules, regulations and guidelines established by the U.S. Patent and Trademark Office.

What has apparently happened in this situation, is that the Examiner, with or without supervisory oversight, has apparently found that in order to frustrate Appellant's right of appeal, he need merely raise formality objections, thereby denying Appellant his statutory right of appeal. Petitioner attaches a copy of 37 C.F.R. §41.37(c)(1)(v) to this petition. The Rule only requires a "concise explanation" of the subject matter defined in the independent claims and not an extensive argument. Applicants submit that the Examiner may want to prevent the appeal from going forward on the merits for any number of reasons, including reducing his workload by obtaining a disposal (abandonment) without writing an Examiner's Answer. Such a procedure is arbitrary and capricious and, if left to stand to individual Examiner's whims, will result in even further lack of respect for the patent system. The Examiner may merely object to Applicants' Summary of the Invention in the Appeal Brief which will prohibit Appellant's right of appeal and, furthermore, the Petition Office's

suggestion that they would defer to the Examiner on such issue is a tacit approval of this Examiner's position in preventing Appellant their right to appeal.

There is no requirement in 37 C.F.R. §41.37(c)(1)(V) to make any reference to the drawings except by way of reference characters already present therein. If the Examiner believes that such reference characters were not sufficient to enable the Board, in light of the totality of disclosure contained in the original specification (including the claims, of which they are a part) then such objection should have been made during prosecution and not as a basis for denying Appellant's right of appeal.

Appellants note that a substantial expense, including the payment for a four month extension of time, and the unduly long delay in prosecution by the Examiner, is an administrative abuse of the authority granted to it by Congress based on the whim of an Examiner requiring reference characters to be included in explaining the summary of the invention, when such reference characters were not required by him at any time during the prosecution leading up this appeal.

Appellants respectfully submit that their right of appeal is statutory and cannot be thwarted by an individual Examiner interpreting the rules as he sees fit, clearly contrary to the requirements of both the statutes and the rules. For the foregoing reasons, acceptance of this Petition to Revive and the accompanying Appeal Brief and docketing of this matter for appeal is respectfully requested.

Respectfully submitted,



Thomas P. Pavelko
Registration No. 31,689

TPP/mat
Attorney Docket No.: TPP 30887CIP2
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Facsimile: (202) 408-5200 or (202) 408-5088

Date: January 28, 2008

Attachments: 37 C.F.R. §41.37
Interview Summary Record
Third Supplemental Appeal Brief

subpart, the Board may relinquish jurisdiction to the examiner or take other appropriate action to permit completion of the file.

(c) Prior to the entry of a decision on the appeal by the Board, the Director may sua sponte order the proceeding remanded to the examiner.

[Added, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

§ 41.37 Appeal brief.

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2)

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points



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Group Art Unit: 3679

Serial No.: 09/910,960

Examiner: V. MacArthur

Filed: July 24, 2001

Confirmation No.: 4841

For: GUIDING MEANS AT A JOINT

INTERVIEW SUMMARY RECORD

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This Interview Summary Record relates to the discussion during a telephonic interview which occurred on May 1, 2007 between the undersigned's associate, Eric Robins, and Examiner Victor L. MacArthur.

In discussion of the Notice of Non-Compliant Brief mailed April 24, 2007, which includes a statement that "the summary of claimed subject matter" section fails to include the reference character associated with each claimed element" The undersigned's associate noted that the drawings illustrated each claimed element but that some of the claimed elements were not referenced by a reference character. The Examiner suggested that in preparing a response to the Notice of Non-Compliant Brief, that Applicants include reference numerals to elements shown in the drawings, but not previously referenced by a reference character.

Applicants believe that there was no requirement to so label the drawings during this phase of prosecution, i.e., during appeal, but would comply with the Examiner's suggestions in order to expedite the appeal process.

Respectfully submitted,



Thomas P. Pavelko
Registration No. 31,689

TPP/mat
Attorney Docket No.: TPP 30887CIP2

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Date: January 28, 2008